IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

MONDAY, THE 19TH FEBRUARY 2007 / 30TH MAGHA 1928

CRL.A.No. 270 of 2007(C)

SC.126/2000 OF ADDL.SESSIONS COURT, NORTH PARAVUR.
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APPELLANT:

STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM (CIRCLE INSPECTOR OF POLICE, KURUPPAMPADY).

BY PUBLIC PROSECUTOR SRI. C.M. NAZER.

RESPONDENT/ACCUSED:

BABU, AGED 26, S/O. VELAYUDHAN, CHITTADATH HOUSE, POOMALA KARA, ASAMANNUR VILLAGE (MUKKOOTTATHIL HOUSE, KYPRA KARA, NEDUMBASSERY VILLAGE, ALUVA TALUK).

BY

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 19/02/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & T.R.RAMACHANDRAN NAIR, JJ.

Crl.A.No.270 OF 2007 &
C.M.Appl.No.7647 of 2006

Dated 19th February, 2007

JUDGMENT

Koshy,J.

This appeal is filed by the State against an order of acquittal with a petition for condoning the delay of 955 days in filing the appeal. When the delay condonation petition was posted, we have directed the public prosecutor to argue the merits of the matter also. In this case, the Judgment was pronounced on 24th June, 2003. The only reason stated for delay is the heavy workload in the office of the public prosecutor. That is not a ground for condoning the delay as such reason can be raised in every cases and if such an attitude is taken, provision made by the Legislature in fixing limitation will become meaningless. It is true that delay can be condoned if sufficient reasons are given by the appellant. Here, no sufficient reasons are given for condoning the delay. Hence, the delay condonation petition is liable to be dismissed. However, since it is a criminal case and the respondent was an accused in a murder crime, we have gone through the evidence of the case to find out whether non-admission of the appeal on the ground of delay will cause any substantial injustice.

2. According to the prosecution, the deceased Lakshmi allowed the accused and his wife to stay in her house on condition that they should look after her. A deed was also executed whereby the house was bequeathed to the accused. But, later, their relationship became strained and the deceased Lakshmi cancelled the bequest made in favour of the accused. The accused therefore was asked not to go to the house of Lakshmi. But, he trespassed into the house on 7.4.1997 at 9.30 p.m. and caused death of Lakshmi by smothering her by using pillow. A grandson of Lakshmi on getting information rushed to the place and found Lakshmi lying dead on the floor between the wall and coat in the bed room and he gave the F.I. Statement. PW2 Parvathy is the daughter of younger sister of Lakshmi. She stated that a Will was executed by Lakshmi in favour of the accused and accused, his wife Sindhu and their child were residing in the house of Lakshmi. One day Rs.600/= was lost from the house and Lakshmi suspected Sindhu responsible for the theft and dispute arose between them. Subsequently, Lakshmi cancelled the Will. Thereafter, on 8.4.1997 Lakshmi was found dead by PW4 Annamma, a close neighbour. PW3 Rajan who was a member of Asamannur Panchayat went along with PW1 to the police station. He became hostile and no part of

his examination is beneficial to the prosecution. PW4, Annamma stated that she is a close neighbour of the deceased. According to her, accused Babu and his wife were residing with the deceased Lakshmi. She also stated that Lakshmi had quarrel with Sindhu. But, according to her, the accused had no quarrel with the deceased. In fact, even after dispute with his wife, he used to go to the house of the deceased and used to help her. On 7.4.1997 PW4 gave `Kanji' to the deceased at 8 p.m. At that time, the accused was talking with Lakshmi and they were in very friendly terms. On the next day PW4 Annamma found Lakshmi lying dead in the bed room. Even though it is alleged that she was smothered using pillow, pillow was not found out. There is no evidence in this case connecting the accused with the crime except the alleged motive and the last seen theory stated by PW4. The alleged motive stated by PW2 was not accepted by the court below as PW2 is the beneficiary as she is interested in the sense that the property will come to her on the death of the deceased. PW4's evidence will show that even though accused was residing earlier with the deceased and there were some quarrels between the wife of the accused and deceased, the accused has no quarrel with the deceased. She clearly stated that even after the alleged quarrel accused used to come to the house

of the deceased occasionally to enquire about her and help her and their talks were very friendly at the time when PW4 saw them together. There is no evidence for clearly pointing out the exact time of death even though from the prosecution evidence it can be gathered that in that night she was smothered to death. Even though last seen theory can be taken as one of the connecting links, that alone, on the facts and circumstances of this case and friendly relationship stated by PW4, cannot be taken as the sole ground for convicting the accused. It is true that Ext.P17 Will was pressed by the prosecution. But, evidence shows that immediately after the death of the deceased PW2 with her husband (CW9) started living in the house of the deceased and Ext.P17 was recovered from them and it is not proved that Ext.P17 Will was executed actually by the deceased. The last evidence that was relied on by the prosecution is the chemical examination report wherein it is stated that MO3 Kailimundu contains human blood even though blood group was not tested. But, even the recovery of Kailimundu was not proved. The mahazar witness turned hostile. The Investigating Officer who recovered Kailimundu was not examined. So, there is no evidence to show that MO3 is the Kailimundu of the accused. In the above circumstances, the court below found that prosecution was

not able to prove the case beyond reasonable doubt and all the links of the chain were not proved. We fully agree with the court below. In any event, it cannot be stated that view of the court below is not a possible one and appellate court will not interfere unless the findings are perverse or patently illegal. Here, there is no patent illegality or perverse finding. There is no reason to condone the delay.

Hence, the delay condonation petition and the appeal are dismissed.

J.B.KOSHY
JUDGE

T.R.RAMACHANDRAN NAIR
JUDGE

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